

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 11-10-04.

The IRO reviewed office visits, electrical stimulation, manual therapy, DME, therapeutic exercises, neuromuscular re-education, and FCE on 1-5-04 through 4-20-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. The IRO agrees with the previous adverse determination that the office visits (in excess of twice monthly), electrical stimulation, manual therapy, DME, therapeutic exercises, and neuromuscular re-education were not medically necessary. The IRO deemed that the office visits on 1-5-04, 1-16-04, 2-2-04, 2-16-04, 3-1-04, 3-17-04, and 4-20-04 and the FCE on 2-11-04 were medically necessary. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO Decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 12-9-04, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

Code 97750-FC billed for date of service 1-28-04 was denied as "F. The requestor billed \$587.04 and the carrier paid \$400.00. On 1-31-05 the carrier submitted proof of additional payment made under check # 257791 issued 1-24-05 for \$196.15. Therefore, no dispute exists.

Code 99080-73 billed for date of service 2-12-04 was denied as "U/N – no change in work status; no mention of 2 FCEs, no objective testing." Per Rule 129.5, the TWCC-73 is a required report and is not subject to an IRO review. The requestor did not submit the TWCC-73 to support a change in work status; therefore, no reimbursement recommended.

Codes 97545-WH and 97546-WH billed for dates of service 3-29-04 through 4-12-04 were denied as "Z – preauthorization requested but denied." Per Rule 134.600 (h)(9), a work hardening program not approved for exemption by the commission requires preauthorization. Requestor did not submit a preauthorization approval letter or proof of exemption. Therefore, no reimbursement recommended.

Code 99080-73 billed for date of service 4-20-04 was denied as "N – there is no change in work status as required for a TWCC-73". The requestor did not submit the TWCC-73 to support a change in work status; therefore, no reimbursement recommended.

Code 97750-FC billed for date of service 4-21-04 was denied as “N – documentation indicates pass through billing not allowed. Dr. Parks did FCE.” The requestor did not submit the FCE report to support the documentation requirements for a discharge FCE.

The above Findings and Decision is hereby issued this 1st day of February 2005.

Dee Z. Torres  
Medical Dispute Resolution Officer  
Medical Review Division

Enclosure: IRO Decision



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### NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** January 13, 2005

**To The Attention Of:** TWCC  
7551 Metro Center Drive, Suite 100, MS-48  
Austin, TX 78744-16091

**RE: Injured Worker:**  
**MDR Tracking #:** M5-05-0851-01  
**IRO Certificate #:** 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

**Submitted by Requester:**

- Correspondence Letter dated 12/15/04 from Gilbert & Maxwell
- Subsequent Medical Report dated 11/19/03 from Brett Garner, D.C.
- Daily Progress Notes from Brett Garner, D.C. dates 11/3/03-1/2/04
- TWCC 73 dated 11/20/03 from Brett Garner, D.C.

**Submitted by Respondent:**

- Employers First Report of Injury or Illness dated 8/25/03
- Designated Doctor Examination dated 11/22/04 from Amrit Thandi, M.D.
- Daily Progress Notes from Brett Garner, D.C. 8/28/03-4/5/04
- Pain and Recovery Clinic-S.W. Work Hardening/Work Conditioning Activity Report
- Interactive Pain Management evaluation from Carolyn Kowalski, MEd, LPC
- TWCC 73 dates 8/29/03-5/11/04 from Brett Garner, D.C.
- Optimum Medical Testing Functional Capacity Evaluation dated 4/21/04
- Optimum Medical Testing Impairment Rating Evaluation dated 4/22/04
- TWCC 69 dated 4/22/04 from Lawrence Parks, D.C.
- Letter of Clarification dated 4/12/04 from Brett Garner, D.C.
- Correspondence Letter from Jarrod Cashion, D.C. dated 5/25/04
- MRI Report of the Cervical Spine dated 10/3/03 from Fort Bend Imaging
- MRI Report of the Lumbar Spine date 10/3/03 from Fort Bend Imaging
- Optimum Medical Testing electrodiagnostic evaluation dated 11/20/03 from Meyer Proler, M.D.
- Designated Doctor Evaluation dated 3/4/04 from Jarrod Cashion, D.C.
- Payment of Compensation or Notice of Refused/Disputed Claim
- Functional Capacity Evaluation dated 1/28/04 from Wayne Parks, D.C.
- Required Medical Evaluation from David Vanderweide, M.D.
- Memorial Hermann Healthcare System Emergency Center evaluation
- Houston Fire Department Basic Response Report
- Subsequent Medical Report dated 11/19/03 from Brent Garner, D.C.
- Initial Therapy Evaluation dated 9/28/03 from Lee Nickel, LPT
- Initial Medical Report dated 8/29/03 from Brett Garner, D.C.
- U.S. Anesthetics Services, P.A. dated 9/4/03 from Andrew McKay, M.D.
- Medical Business Management Services dated 12/15/04 from Jan K. Skinner, MPH
- Payment of Commission or Notice of Refused/Disputed Claim
- MRI Report of the Cervical Spine dated 10/3/03 from Fort Bend Imaging
- MRI Report of the Lumbar Spine dated 10/3/03 from Fort Bend Imaging
- Optimum Medical Testing electrodiagnostic evaluation dated 11/20/03 from Meyer Proler, M.D.
- Neurodiagnostic Associates of Houston NCV report dated 2/25/04
- Initial Medical Report dated 8/29/03 from Brett Garner, D.C.
- Subsequent Medical Report dated 11/19/03 from Brett Garner, D.C.
- U.S. Anesthetics Services, P.A. dated 9/4/03 from Andrew McKay, M.D.
- U.S. Anesthetics Services, P.A. dated 3/9/04 from Andrew McKay, M.D.

- Optimum Medical Testing Functional Capacity Evaluation dated 1/28/04 from Wayne Parks, D.C.
- Designated Doctor Evaluation dated 3/4/04 from Jarrod Cashion, D.C.
- Optimum Medical Testing Functional Capacity Evaluation dated 4/21/04 from Wayne Parks, D.C.
- Optimum Medical Testing Impairment Evaluation dated 4/22/04 from Wayne Parks, D.C.
- Designated Doctor Evaluation dated 11/22/04 from Amrit Thandi, M.D.
- Daily Progress Notes dates 1/5/04-3/17/04

### **Clinical History**

I have had the opportunity to review the medical records in the above-mentioned case for the purpose of an Independent Review. Mr. \_\_\_\_ injured his neck and low back in a motor vehicle accident on \_\_\_\_ while employed as a Metro Bus Operator. The claimant was initially treated by Dr. Thedan and prescribed passive physical therapy modalities. The claimant changed treating doctor to Brett Garner, D.C. and began treatment on 8/29/03 at Pain & Recovery Clinic. The claimant's treatment with Dr. Garner has consisted of chiropractic manipulation with various physiotherapy modalities and active rehabilitation. Mr. \_\_\_\_ was referred to Andrew McKay, M.D. on 9/4/03 and 3/9/04, who recommended the claimant to continue conservative treatment with Dr. Garner with a work conditioning/ work hardening program, which was completed on 4/12/04. The claimant had a MRI of the cervical spine and lumbar spine performed on 10/3/03 at Fort Bend Imaging. The MRI of the cervical spine revealed a small central disc herniation of C4/C5 with minimal indentation of the nerve roots, prominent annular fibrosis at C5/C6 and mild spondylosis with prominent annulus fibrosis of C3/C4. The MRI of the lumbar spine revealed mild spondylosis and prominent annulus fibrosis at L4/L5. The claimant also had electro-diagnostic studies performed on 11/20/03 which revealed acute cervical radiculopathy primarily affecting the right C5 nerve root and possible lumbar radiculopathy affecting the right and left L5 nerve root. The claimant was evaluated by designated doctor, Jarrod Cashion, D.C. on 2/13/04 and determined the claimant at maximum medical improvement with 5% whole body impairment. The claimant was referred to Wayne Parks, D.C. for an impairment rating by his treating physician Dr. Garner and determined the claimant at maximum medical improvement with a 24% whole body impairment. The claimant was again evaluated by designated doctor, Amrit Thandi, M.D., who determined the claimant at maximum medical improvement with 0% whole body impairment on 11/22/04.

### **Requested Service(s)**

Office visits (99212, 99214), electrical stimulation (97032), manual therapy (97140), durable medical equipment (E1399), therapeutic exercises (97110), neuromuscular re-education (97112), functional capacity exam (97750-FC) for dates of service 1/5/04 through 4/20/04.

### **Decision**

I agree with the insurance carrier and find that electrical stimulation (97032), therapeutic exercises (97110), manual therapy technique (97140), neurological re-education (97112) and Durable Medical Equipment (E1399), is not reasonable and necessary 4 months post injury for

an apparent soft tissue injury. Office visits in excess of twice monthly are not medically necessary, and include all dates for office visits (99212, 99214) not specifically listed in the paragraph below.

I disagree with the insurance carrier and find that office visits (99212, 99214) on 1/5/04, 1/16/04, 2/2/04, 2/16/04, 3/1/04, 3/17/04, and 4/20/04, at a frequency of no more than semi-monthly, and the functional capacity evaluation (97750-FC) are reasonable and necessary.

### **Rationale/Basis for Decision**

With respect to the services I do not find medically necessary, I form my decision using The Official Disability Guidelines 8<sup>th</sup> Edition which uses many resources, one being the “Mercy Guidelines”, the consensus document created by the American Chiropractic Association in conjunction with the Congress of State Chiropractic Associations, entitled Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference which allows chiropractic treatments of up to 18 office visits over 6-8 weeks with evidence of functional improvement and a fade of treatment frequency and introduction to a self-directed home therapy program for a cervical and lumbar sprain/strain injury. It appears that the claimant was not making functional improvement based on the provided daily progress notes and the claimant’s pain scale levels throughout his treatment. Therefore, additional treatment beyond 6-8 weeks post injury is not reasonable or necessary. It appears that the claimant does have a pre-existing degenerative condition in the cervical and lumbar spine as evident on the MRI finding of 10/3/03. I reference the following as per the Orthopedic Knowledge Update-5 as published by the American Academy of Orthopedic Surgeons, pg. 589, “Over the third through the fifth decades of life, progressive degenerative changes occur in the spine that may be quite dramatic. In general, the first manifestations of aging are seen in the intervertebral disks, with subsequent changes in the bones and articular processes becoming evident. Diffuse bulging or focal extrusion of disk material will result in narrowing of the intervertebral disk space.”

With respect to the services which I find medically necessary, the office visits are reasonable and necessary for up to 1-2 times monthly (no more frequently than every two weeks) for up to 6-8 months post injury for the treating doctor to monitor the claimant’s progress with home treatment/exercise program and/or make the appropriate referrals. It is not reasonable and necessary for office visits in association with ongoing physical therapy or for supervision of a treatment plan at a frequency more than semi-monthly. The functional capacity evaluation is reasonable and necessary to determine the claimant’s current physical demand levels for return to work status.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 13<sup>th</sup> day of January 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder